

Rule 9019-2

ALTERNATIVE DISPUTE RESOLUTION (ADR); MEDIATION

(a) Appointment of Mediators:

(1) Mediation Register. The Clerk shall establish and maintain a register of qualified attorneys who have volunteered to serve as mediators in contested matters and adversary proceedings in cases pending in the Court. The attorneys so registered shall be selected by the judges from a list of attorneys who meet the qualifications hereinafter described.

(2) Qualifications of Mediator. To qualify for service as a mediator under this rule, an attorney must meet the following minimum qualifications:

(i) Be an active member of The Florida Bar, duly licensed to practice before the courts of the State of Florida and the federal courts for the Middle District of Florida;

(ii) Have been admitted to practice in a state or federal court for at least four (4) years;

(iii) In at least ten (10) bankruptcy matters, the attorney:

(1) Has served as the attorney of record for the debtor, trustee, or committee from commencement through conclusion; or

(2) Has served as the attorney of record for a party in interest in adversary proceedings or contested matters from commencement through completion; and

(3) Has completed a mediation training course which has qualified for continuing legal education credit or as been approved by a court of competent jurisdiction; or

(4) Has been qualified as a mediator under another state or federal mediation program.

(3) Mediator Application Procedures. Each attorney who wishes to be selected as a mediator must submit an application on the court approved form to the Clerk.

(4) Removal from Register. The Clerk shall remove an attorney from the register of mediators at the attorney's request or at the direction of the Court in the exercise of its discretion. If removed at the attorney's own request, the attorney thereafter may request to be reappointed to the register without the necessity of submitting a new application. Upon receipt of such request, the Clerk shall reassign such qualified attorney to the register.

(5) Mediator's Oath. Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator.

(6) Disqualification of a Mediator. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144 and shall be disqualified in any action in which the mediator would be required to do so if the mediator were a judge governed by 28 U.S.C. § 455.

(b) Assignment of Matters to Mediation:

(1) The Court may order the assignment of a matter or proceeding to mediation at a pretrial conference or other hearing, upon the request of any party in interest, the U.S. Trustee, or upon the Court's own motion. Notwithstanding the assignment of a matter or proceeding to mediation, the Court shall set such matter or proceeding for trial, final hearing, pretrial conference or other proceeding as is appropriate in accordance with the Federal Rules of Bankruptcy Procedure or Local Rules and procedures. The Court shall appoint a mediator and, if necessary, an alternate mediator, from the register of mediators on a blind rotation basis. If the parties stipulate to a particular person on the register of mediators, the Court may appoint that person as mediator. If the mediator is unable to serve, he or she shall file, within five (5) days after receipt of the notice of appointment, a notice of inability to serve, and the Court shall appoint the alternate as a replacement mediator. Upon assignment of a matter or proceeding to mediation, each party thereto shall comply with this rule and any requirements imposed by the Court. The Clerk shall provide copies of procedures to the parties and forms to the mediator.

(2) Notwithstanding a matter being referred to mediation, discovery and preparation for final hearing pursuant to any order setting matter for hearing or the Federal Rules of Bankruptcy Procedure shall not be stayed by mediation.

(c) Types of Cases Subject to Mediation:

(1) Unless otherwise ordered by the presiding judge, any civil action, adversary proceeding, or contested matter may be referred by the Court to mediation providing the matter, proceeding, or case has not previously been a subject of mediation in this Court.

(2) Any action, proceeding, or claim or contested matter may be referred to mediation conference upon stipulation by counsel of record.

(d) Mediation Conference:

(1) Upon consultation with the parties and their attorneys, the mediator shall fix a reasonable time and place for the mediation conference and shall give the parties at least fifteen (15) days advance written notice of the conference or such shorter time as may be agreed to by the parties. The conference shall be set as soon after the entry of the mediation order and as far in advance of the final evidentiary hearing as practicable. In keeping with the goal of prompt dispute resolution, the mediator shall have the duty and authority to establish the time for mediation activities including a deadline for the parties to act upon a settlement or upon mediated recommendation.

(2) An attorney who is responsible for each party's case shall attend the mediation conference. Each individual party and the representatives of each non-individual party shall appear with the authority to negotiate the amount and issues in dispute. The mediator shall determine when the parties are to be present in the conference room. The mediator shall report to the Court willful failure to attend the mediation conference or to participate in the mediation process in good faith, which failure may result in the imposition of sanctions by the Court.

(e) Recommendations of Mediator:

(1) The mediator shall have no obligation to make any written comments or recommendations; provided, however that the mediator in his or her discretion may furnish the attorneys for the parties with a written settlement recommendation. No copy of any such recommendation shall be filed with the Clerk or the Court.

(f) Post-Mediation Procedures:

Within ten (10) days after the mediation conference, the mediator shall file with the Court a report showing compliance or non-compliance by the parties with the mediation order and the results of the mediation. If the parties have reached an agreement regarding the disposition of the matter or proceeding, they shall prepare and submit to the Court within twenty (20) days of the filing of the mediator's report an appropriate stipulation and joint motion for approval or compromise of controversy which shall be set for hearing. Failure to file a motion to compromise controversy or motion to approve stipulation as required herein shall be a basis for the Court to impose appropriate sanction. If the mediator's report shows mediation has ended in an impasse, the matter will be tried as scheduled.

(g) Confidentiality:

Other than the official mediator's report, the mediator's questionnaire, documents and any statements made by the parties, attorneys and other participants presented or made during mediation proceedings shall, in all respects, be privileged and not reported, recorded, or placed into evidence, made known to the Court or construed for any purpose as an admission. No party shall be bound by any statement made or action taken at the mediation conference unless a settlement is reached, in which event the agreement shall be reduced to writing pursuant to paragraph (f) of this Rule. Rule 408 of the Federal Rules of Evidence shall apply to mediation proceedings.

(h) Withdrawal from Mediation:

Any action, claim, adversary proceeding or contested matter referred to mediation pursuant to these rules may be withdrawn from mediation by the presiding judge at any time upon determination for any reason the matter is not suitable for mediation. Nothing in these rules shall prohibit or prevent any party in interest, U.S. Trustee, or mediator from filing an appropriate motion to withdraw a matter from mediation for cause.

(i) Compliance with the Bankruptcy Code and Rules:

Nothing in this rule shall relieve any debtor, party in interest, or the U.S. Trustee from complying with any other orders of this Court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or these rules.

(j) Mediation Forms:

Each presiding judge may adopt official forms to implement these procedures.

(k) Nothing in this rule is intended to limit the authority of the presiding judge to order, or the parties to agree, to mediation:

(1) by any person selected, whether or not on the mediation register or selected on a blind rotation basis; or

(2) by procedure different from those set forth in this rule.

If the Court orders mediation other than pursuant to the methods and procedures of this rule, the provisions of paragraphs (g) and (i) shall nevertheless apply.

Notes of Advisory Committee

1997 Amendment

This amendment conforms the existing Local Rules to the uniform numbering system prescribed by the Judicial Conference of the United States and to the model system suggested and approved by the Advisory Committee on Bankruptcy Rules of the Judicial Conference's Committee on Rules of Practice and Procedure. In renumbering the Local Rules to conform to the uniform numbering system, no change in substance is intended. This amendment is effective on April 15, 1997.

This rule was formerly Local Rule 2.23. The Advisory Committee Notes to the superseded rules may be helpful in interpreting and applying the current rules.

1995 Amendment

The amendment to Local Rule 2.23(b) makes clear that if the parties stipulate to a particular person on the register of mediators, the Court may appoint that person as mediator.

The amendment to Local Rule 2.23(d)(1) makes clear that the parties may agree to a shorter notice period for the mediation conference.

Paragraph (k) is new. It clarifies that the Court and the parties retain the flexibility to order or conduct mediation in ways other than that described in this rule. If the Court orders mediation other than pursuant to the methods and procedures contained in this rule, the confidentiality and compliance provisions of the rule will nevertheless apply to that mediation.

These amendments were effective on February 15, 1995.